WONG HONG TOY & ANOR.

v.

PUBLIC PROSECUTOR

COURT OF APPEAL, SINGAPORE
LAI KEW CHAI J
LP THEAN J
FA CHUA J
[CRIMINAL APPEAL NO. 9 of 1985]
9 OCTOBER 1985

CRIMINAL LAW AND PROCEDURE: *Reservation of questions of law to Court of Criminal Appeal - Whether Chief Justice's decision in refusing to reserve questions of law is appealable or final - Meaning of "any decision made by the High Court in the exercise of its original criminal jurisdiction" in s. 44(1) of the Supreme Court of Judicature Act - Scope of s. 60(4) of the said Act.*

The appellants (Wong Hong Toy and J.B. Jeyaretnam) by Criminal Motion No. 23 of 1985 moved the High Court "for an order that the decisions of the High Court on the question(s) of law particularised in the affidavit in support be reserved for the decision of the Court of Criminal Appeal pursuant to s. 60 of the Supreme Court of Judicature Act." The Chief Justice dismissed the application. The appellants appealed against that decision.

The issue in this appeal is:

Whether the decision of the learned Chief Justice in refusing to reserve the questions of law is appealable or final and this question turns on the true meaning of "any decision made by the High Court in the exercise of its original criminal jurisdiction" in s. 44(1) of the Act.

Held:

[1] The High Court has an all-embracing original criminal jurisdiction as set out in s. 15 of the Act. Section 19 sets out the appellate criminal jurisdiction of the High Court. It is empowered to hear appeals from the District or Magistrate's Courts or to hear and determine points of law reserved by the Subordinate Courts according to the law of criminal procedure.

[2] The type of criminal appeals which lie from the High Court to the Court of Criminal Appeal depends on the scope of s. 44(1) of the Act. The decision of the learned Chief Justice in refusing to reserve the questions of law was not a "decision made by the High Court in the exercise of its original criminal jurisdiction" within the meaning of the expression in s. 44(1) of the Act. The Court of Criminal Appeal is a creature of the Act and it has no powers other than those conferred upon it by the Act. The decision was made after the conclusion of an appeal to the High Court in exercise of its appellate jurisdiction and on the application of the appellants.

[3] Section 60(4) of the Act provides that the Court of Criminal Appeal shall hear and determine the question reserved by the High Court but is silent and makes no provision for any appeal by any party aggrieved by any decision of the High Court refusing to reserve any question of law of public interest.

[4] It is a long accepted view of the legal profession that appeals from the Subordinate Courts end in the High Court and that a decision not to reserve any question of law was exercised in accordance with the appellate criminal jurisdiction of the High Court.

[Appeal dismissed.]

Cases referred to:
Gurbachan Singh v. PP [1967] 2 MLJ 220
Kulasingam v. PP [1978] 2 MLJ 243
R.. v. Jefferies [1969] 1 QB 120
Yap Ee Kong v. PP [1981] 1 MLJ 144
PP v. Lim Joo Soon [1981] 1 MLJ 107

Legislation referred to:
Criminal Procedure Code [Sing], ss. 6, 7, 9, 177
Courts of Judicature Act 1964, ss. 50(1), 66(1)
Misuse of Drugs Act 1973 [Sing], s. 30
Penal Code [Sing], ss. 34, 199, 193, 421
Rules of the Supreme Court 1970 [Sing], O. 41 r. 5(2)
Subordinates Courts Act [Sing], ss. 50, 51
Supreme Court of Judicature Act [Sing], 15, ss. 3, 7, 15, 19, 44(1), 60, (1), (4)

Other source referred to:
Halsbury's *Laws of England*, 4th Edn., Vol. 11, para. 611

For the appellants - J.B. Jeyaretnam with Subhas Anandan
For the public prosecutor - Tan Teow Yeow

JUDGMENT

This was an appeal against the refusal of the learned Chief Justice to reserve for the decision of the Court of Criminal Appeal some nine questions said to be questions of law of public interest which arose in the course of six Magistrate's Appeals which were determined by the Chief Justice. The appeal turned on the statutory construction of sub-section 44(1) of the Supreme Court of Judicature Act Cap. 15 ("the Act") under which it was contended on behalf of the Public Prosecutor that we had no jurisdiction to entertain the appeal on the ground that the learned Chief Justice in refusing to reserve the questions of law under sub-section 60(1) of the Act was exercising the appellate criminal jurisdiction of the High Court or that such a decision of refusing to reserve the questions of law was not **"a decision made by the High Court in the exercise of its original criminal jurisdiction"** (emphasis added by us) within the meaning of that critical expression in sub-section 44(1) of the Act. At the conclusion of arguments on this preliminary point of law, which had to be dealt with before, if at all, the hearing of the merits could be embarked upon, we were unanimously of the view that we had no jurisdiction to hear and determine the appeal which we accordingly dismissed. We now give our reasons.

The facts and the course of the prosecution, trials and convictions of the appellants before and by the District Court and by the High Court in exercise of its appellate criminal jurisdiction may be stated within a reasonably brief compass. Central to the proceedings were (a) the appointment on 1 June 1982 by the High Court of a receiver to receive the assets of the Workers' Party, a political party of which the appellants were respectively the chairman and the secretary-general, which was an execution proceeding invoked by a judgment creditor to recover the costs then owed by the Workers' Party; and (b) the appellants' disposal of the proceeds of three cheques for the sums of $2,000, $200 and $400 which were all drawn in favour of the Workers' Party as the payee in the six months preceding the appointment of the receiver but which, though the property of the Workers' Party, were not paid into the bank account of the Workers' Party but were either endorsed over or altered in one case by the drawer in circumstances in which the Workers' Party did not receive any consideration for the proceeds nor were the transactions reflected in the accounts of the Workers' Party.

In the course of the receivership, the receiver submitted his accounts to the High Court for the purpose of passing them. To his affidavit in support was annexed a declaration jointly made by the appellants as permitted by O. 41 r. 5(2) of the Rules of Supreme Court 1970. But the declaration was not made in the form prescribed in the Schedule to the Statutory Declaration Act 1835 which by s. 2 of the Singapore Statutory Declarations Act was deemed to be in force in Singapore. Briefly summarised for present purposes, the appellants' joint declaration stated that the receipts and payment account and the income and expenditure account both for the periods between 1 January 1982 and 16 June 1982 and the balance sheet as at 16 June 1982 of the Workers' Party, which were drawn up by the treasurer of the Workers' Party and exhibited in the High Court, reflected "a true and fair view of the transactions and results for the period specified therein and of the state of affairs of the Workers' Party as at the date specified."

The $2,000 cheque, as endorsed, was delivered by the first appellant to a firm of solicitors in February 1982 and its proceeds were utilised to pay a Judgment debt, not of the Workers' Party, but of one Madam Chiew, who was the mother of the second appellant's election agent in the December 1980 general elections. The $200 cheque as endorsed, was paid by the first appellant into his personal account with the Bank of America. The $400 cheque, as altered by the drawer, was encashed by an unknown person. The fact of the receipts of these cheques did not appear in any of the accounting records of the Workers' Party nor were they referred to in the aforesaid accounts prepared by the treasurer of the Workers' Party.

In the event, the appellants were arraigned before the District Court in a joint trial to answer to five charges. In two charges, they were separately charged for having knowingly made a false statement in a declaration which was by law receivable as evidence and punishable under s. 199 read with s. 193 of the Penal Code. In the other three charges, at the heart of which were the proceeds of the three cheques, the appellants were jointly charged that in furtherance of a common intention of them both they had fraudulently delivered without adequate consideration to third parties the property of the Workers' Party in the three cheques knowing it to be likely that they would thereby prevent the distribution of the property amongst the creditors of the Workers' Party, which were offences punishable under s. 421 read with s. 34 of the Penal Code.

At the conclusion of the trial in the District Court, the learned Senior District Judge acquitted and discharged both appellants on the false declaration charges and the two charges relating to the $200 cheque and the $400 cheque. But the learned District Judge convicted the appellants on the charge relating to the $2,000 cheque and sentenced each to pay a fine of $1,000.

The Public Prosecutor in five Magistrate's Appeals appealed to the High Court against the acquittals and the sentences. Both the appellants appealed to the High Court against their convictions. The appeals were heard by the learned Chief Justice who (a) ordered a new trial before another District Judge in respect of the charges relating to the false declaration; (b) found the appellants guilty in respect of the charges relating to $200 cheque and the $400 cheque and sentenced each of them to pay a fine of $1,000 in respect of each charge and in default to serve imprisonment for a period of three weeks; and (c) dismissed the appeal of the Public Prosecutor against the adequacy of the fines imposed. In doing so, the learned Chief Justice set out his reasons in a long Judgment.

In late April this year, the appellants by Criminal Motion No. 23 of 1985 moved the High Court "for an order that the decisions of the High Court on the question(s) of law particularised in the affidavit in support be reserved for the decision of the Court of Criminal Appeal pursuant to s. 60 of the Act." The material paragraph of the second appellant's affidavit set out the questions of law in the following terms:

(i) Magistrate's Appeals Nos 8 and 9 of 1984

(a) Whether the declaration by the respondents was a declaration within the scope and meaning of s. 199 of the Penal Code;

(b) Whether Mr. Daljit Singh was authorised by law to receive the said declaration from the respondents.

(ii) Magistrate's Appeals Nos 11 and 13 of 1984

(a) Whether the property in the cheques for $2,000 and $200 was in the Workers' Party before the cheques were negotiated;

(b) On who was the onus to prove the property of the cheques in the Workers' Party and whether such onus was discharged by the party on who it lay on the whole of the evidence adduced before the Court;

(c) Whether the said onus shifted at any time from one party to the other, alternatively whether there was any onus on the respondents at any stage of the trial to prove that the property in the said cheques was not in the Workers' Party;

(d) Whether on the whole of the evidence adduced before the Court the Prosecution had discharged the onus on it to satisfy the Court that the respondents fraudulently transferred the property in the said cheques assuming the property in the said cheques was in the Worker's Party;

(e) Whether the High Court was right and justified on well established principles of law in disturbing the very careful findings of fact made by the Trial Judge before acquitting the respondents on the charges.

(iii) Magistrate's Appeals Nos 14 and 15 of 1984

(a) Whether the property in the cheque for $400 remained with the Workers' Party after the end of May 1982 and in particular was it so on 2 July 1982 when the proceeds on the cheque were realised;

(b) Whether the whole of the evidence adduced before the Court was capable in law to support the finding of a common intention between the appellants.

As required by the terms of sub-section 60(1) of the Act, the appellants' application was heard before the learned Chief Justice who, at the conclusion of the hearing of the criminal motion, dismissed it. The learned Chief Justice expressed the opinion that none of the questions set out were questions of law and that, in any event, on the assumption that they were questions of law he was of the opinion that none of them were questions of "public interest" within the meaning of that expression in sub-section 60(1) of the Act.

The issue in this appeal is whether the decision of the learned Chief Justice in refusing to reserve the questions of law is appealable or is final. This question turns on the true meaning of 15 words, namely "any decision made by the High Court in the exercise of its original criminal jurisdiction", in sub-section 44(1) of the Act which sets out our jurisdiction as the Court of Criminal Appeal and which has been in its present terms since the enactment of the Supreme Court of Judicature (Amendment) Act, No 58 of 1973 which came into operation on 11 February 1974: see Gazette No. S41 of 1974. The true meaning of the critical 15 words can be gleaned only by an analysis of the statutory enactments relating to the constitution and

criminal jurisdictions of the superior Courts of judicature and of the subordinate Courts of Singapore. Such an analysis requires a study of the Act, the Subordinate Courts Act Cap. 24 and the relevant provisions of the Criminal Procedure Code.

The Act, as stated in the preamble, was enacted to consolidate the law relating to the constitution and powers of the superior Courts of judicature in Singapore. By s. 3 it is provided that "there shall be a Supreme Court in Singapore" with "such powers as is conferred by this Act." The Supreme Court consists of the High Court which, *inter alia*, "shall exercise original and appellate criminal jurisdiction", the Court of Appeal having power over civil appeals and the Court of Criminal Appeal "which shall exercise appellate criminal jurisdiction": see s. 7. We turn now to s. 15 which provides that the High Court shall have jurisdiction to try "all offences" committed within Singapore, on the high seas on board any ship or aircraft registered in Singapore or committed by any citizen of Singapore on the high seas or any aircraft or by certain other "persons" as defined therein. Section 15 is preceded by the words "Original Jurisdiction". Section 19 of the Act sets out the appellate criminal jurisdiction of the High Court. It is empowered to hear appeals from the District or Magistrate's Courts or to hear and determine points of law reserved by these subordinate Courts according to the law of criminal procedure. Under s. 177 of the Criminal Procedure Code the High Court in certain circumstances may order that a particular criminal case be transferred to and tried before the High Court.

Part V of the Act provides for the constitution and jurisdiction of the Court of Criminal Appeal which shall be duly constituted "if it consists of not less than three Judges or any greater uneven number of Judges": see s. 43 under this Part.

Before we turn to s. 44 under Part V of the Act, we have to say that although the High Court has jurisdiction to try "all offences" as stated in s. 15 of the Act, not all of them are tried in the High Court. By s. 6 of the Criminal Procedure Code Cap. 113, it is provided that the Courts for the administration of criminal justice shall be the High Court, the District Courts and the Magistrate's Courts. The criminal jurisdictions of the last two named subordinate Courts are set out in the Criminal Procedure Code: see ss. 50 and 51 of the Subordinate Courts Act. Generally, under s. 7 of the Criminal Procedure Code, the District Court has jurisdiction to try all offences for which the maximum term of imprisonment provided by law does not exceed seven years or which are punishable with fine only. Under the next section in the Criminal Procedure Code, the Magistrate's Court has jurisdiction, amongst others not relevant for present purposes, to try offences for which the maximum term of imprisonment provided by law does not exceed three years or which are punishable with fine only. In respect of offences under the Penal Code, which provide for the bulk of criminal offences in Singapore, it is provided by s. 9 of the Criminal Procedure Code that they may be tried besides the High Court by any other Court by which the offence is shown to be triable in the eighth column of Schedule A to the Criminal Procedure Code. Apart from trying offences under the Penal Code for which the maximum sentences prescribed are seven years or three years respectively, the District Court and the Magistrate's Court are also given jurisdiction by other laws to hear and determine proceedings in which the sentences of imprisonment prescribed to exceed the period of seven years: for example s. 30 of the Misuse of Drugs Act 1973.

As we had stated earlier, appeals from the District Court or Magistrate's Court lie to the High Court which is conferred "the appellate criminal jurisdiction" by s. 19 of the Act. The procedure for such appeals is provided within Chapter XXVIII and Part VII of the Criminal Procedure Code. The type of criminal appeals which lie from the High Court to the Court of Criminal Appeal depends on the scope of sub-section 44(1) of the Act to which we must now return.

We set out below the entire s. 44 of the Act:

> 44. (1) The Court of Criminal Appeal shall have jurisdiction to hear and determine any appeal against any decision made by the High Court in the exercise of its original criminal jurisdiction, subject nevertheless to the provisions of this or any other written law regulating the terms and conditions upon which such appeals may be brought.
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> (2) An appeal by a person convicted shall be either against the conviction or against the sentence or against both:
>
> Provided that where an accused person has pleaded guilty and been convicted on such plea there shall be no appeal except as to the extent or legality of the sentence.
>
> (3) An appeal by the Public Prosecutor shall be either against the acquittal of an accused person or against the sentence imposed upon an accused person by the High Court.
>
> (4) An appeal may lie on a question of fact or a question of law or on a question of mixed fact and law.
>
> (5) The Court of Criminal Appeal shall also have jurisdiction to hear and determine matters brought before it in accordance with the provisions of s. 59 or 60 of this Act."

In our view, the decision of the learned Chief Justice in refusing to reserve the questions of law was not a "decision made by the High Court in the exercise of its original criminal jurisdiction" within the meaning of that expression in sub-section 44(1) of the Act. We are of the view that the Court of Criminal Appeal is a creature of the Act and it has no powers other than those conferred upon it by the Act. The decision was made after the conclusion of an appeal to the High Court in exercise of its appellate criminal jurisdiction and on the application of the appellants. To say that the learned Chief Justice was exercising the original criminal jurisdiction of the High Court when he refused to reserve the questions of law is to extend the meaning and scope of the "original criminal jurisdiction" of the High Court to an extent quite out of line with the statutory framework for the administration of appellate criminal justice in Singapore. The all-embracing original criminal jurisdiction of the High Court under s. 15 of the Act is not in all cases exercised by the High Court but the administration of criminal justice in respect of what we may call the less serious criminal cases, generally those cases not involving the sentence of death or life imprisonment, is entrusted to the Subordinate Courts. The exercise of the original criminal jurisdiction of the High Court involves generally the more serious criminal cases or such less serious criminal cases as may be transferred from the Subordinate Courts to the High Court.

We see that sub-section 60(4) of the Act provides that the Court of Criminal Appeal shall hear and determine the question reserved by the High Court but is silent and makes no provision for any appeal by any party aggrieved by any decision of the High Court refusing to reserve any question of law of public interest.

We have not been referred to any decision in Singapore bearing on the meaning of the critical 15 words in the sub-section. The dearth of authority reflects in part the long accepted view of the legal profession that appeals from the Subordinate Courts end in the High Court and that a decision not to reserve any question of law was part and parcel of the exercise of the appellate criminal jurisdiction of the High Court. We were, however, referred to four Malaysian cases for their highly persuasive authority. We found that the first two decisions of the Malaysian Federal Court were directly helpful. The first case, *Gurbachan Singh v. PP* [1967] 2 MLJ 220, turned on the interpretation of sub-section 50(1) of the Malaysian Courts of

Judicature Act, 1964 which conferred on the Malaysian Federal Court jurisdiction "to hear and determine an appeal by a person convicted by any High Court in exercise of its original jurisdiction," and which in terms was equivalent to the predecessor of sub-section 44(1) of the Act. The second case, *Kulasingam v. PP* [1978] 2 MLJ 243, dealt with the interpretation of the same sub-section in the Malaysian legislation but which, as amended by Act A328, was substantially equivalent to subsection 44(1) of the Act. Azmi CJ (Malaya) (as he then was) in the first case said at p. 221 F/G rhc that the Federal Court had "jurisdiction to hear and determine an appeal from the decision of a lower Court in a criminal matter only when the matter (was) sent up to (the Federal Court) by an order of the High Court. The right of appeal under the (Malaysian) Constitution (was) a creature of statute and unless there (was) a special provision there would be no inherent right". This proposition harked back to what was said by the English Court of Appeal in *R v. Jefferies* [1969] 1 QB 120: also see Vol. 11, Halsbury's *Laws of England*, 4th Edn., para. 611 and notes 4 and 11.

In the second case, the former Lord President of Malaysia, Suffian LP, after setting out sub-section 50(1) of the Malaysian Courts of Judicature Act 1964, as amended by Act A328, said: "By no stretch of the imagination can it be said that the accused's application comes within the above, seeing that what he is dissatisfied with is a refusal by the learned High Court judge to grant a certificate under s. 66 of the Courts of Judicature Act."

Counsel for the appellants made two submissions and, if we understood him correctly, they were as follows. First, he referred to the amendment of sub-section 44(1) of the Act which was effected on 11 February 1974 and argued that the deletion of the words in the previous sub-section 44(1) of the Act, namely, "any appeal by a person convicted" and its substitution by the words "**any** appeal against **any** decision made" (emphases were Counsel's), had widened the scope of the sub-section to include a refusal of the High Court to reserve the questions of law under sub-section 60(1) of the Act. Secondly, Counsel contended that the learned Chief Justice in making the decision he did was exercising the "original criminal jurisdiction" of the High Court. Counsel for the appellants did not draw our attention to any authority. In support of his arguments, he only tendered to us for our consideration copies of two orders made by the Malaysian Federal Court, both of which, as it subsequently became apparent, were in fact orders made in the third Malaysian case of *Yap Ee Kong v. PP* [1981] 1 MLJ 144, which was cited to us by the learned Deputy Public Prosecutor. In that case, the High Court had refused the application to reserve questions of law of public interest which had arisen in the course of the appeal. According to the headnotes of that case, though this was not apparent in the judgment of the Federal Court, an application was then made by way of criminal reference to the Federal Court which heard the application and dealt with the matter as an appeal. Neither *Gurbachan's* case (*supra*) nor *Kulasingam's* case (*supra*) were referred to in the judgment. The Federal Court decided to hear the case as an appeal and cited three cases which on examination appear not to have dealt with the appealability of a decision of the High Court is refusing to reserve a question of law but rather they considered and dilated on the powers of the Federal Court in the first two cases and those of the House of Lords in the third case to review the entire case after and beyond answering the questions of law reserved for their decision by the lower Courts. We would add in passing that s. 66(1) of the Malaysian Courts of Judicature Act 1964 as amended by Act A530 with effect from 23 February 1982, has conferred powers (both discretionary and mandatory as the case may be) on the Malaysian Federal Court to grant leave for determination by itself of any question of law of public interest. We accordingly do not think that *Yap Ee Kong's* case (*supra*) is of any assistance to the appellants.

Finally, we must refer to *PP v. Lim Joo Soon* [1981] 1 MLJ 107 cited to us by the learned Deputy Public Prosecutor admittedly more for completeness than relevance and merely to make the point that the Malaysian Public Prosecutor had in that case in effect applied to the Federal Court for a mandatory order that the High Court do reserve the questions of law, contending that he as the Public Prosecutor was statutorily entitled *ex debito justitiate* to the order from the High Court. The fact that this matter went by way of an application for a mandatory order rather than by way of an appeal underscores the recognition that there was a problem about the lack of jurisdiction.

For these reasons, we dismissed the appeal.

Also found at [1986] 2 CLJ 88